

SECOND REGULAR SESSION  
[TRULY AGREED TO AND FINALLY PASSED]  
HOUSE COMMITTEE SUBSTITUTE FOR

# SENATE BILL NO. 1023

93RD GENERAL ASSEMBLY  
2006

3073L.06T

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## AN ACT

To repeal sections 488.5050, 650.050, 650.055, 650.056, 650.057, and 650.100, RSMo, and to enact in lieu thereof seven new sections relating to exoneration using DNA testing, with penalty provisions.

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*Be it enacted by the General Assembly of the State of Missouri, as follows:*

Section A. Section 488.5050, 650.050, 650.055, 650.056, 650.057, and  
2 650.100, RSMo, are repealed and seven new sections enacted in lieu thereof, to  
3 be known as sections 488.5050, 650.050, 650.055, 650.056, 650.057, 650.058, and  
4 650.100, to read as follows:

488.5050. 1. In addition to any other surcharges authorized by statute,  
2 the clerk of each court of this state shall collect the surcharges provided for in  
3 subsection 2 of this section.

4 2. A surcharge of thirty dollars shall be assessed as costs in each circuit  
5 court proceeding filed within this state in all criminal cases in which the  
6 defendant pleads guilty or nolo contendere to or is convicted of a felony, **except**  
7 **when the defendant pleads guilty or is found guilty of a class B felony,**  
8 **class A felony, or an unclassified felony, under chapter 195, RSMo, in**  
9 **which case, the surcharge shall be sixty dollars.** A surcharge of fifteen  
10 dollars shall be assessed as costs in each court proceeding filed within this state  
11 in all criminal cases, except for traffic violations cases in which the defendant  
12 pleads guilty or nolo contendere to or is convicted of a misdemeanor.

13 3. Notwithstanding any other provisions of law, the moneys collected by  
14 clerks of the courts pursuant to the provisions of subsection 1 of this section shall  
15 be collected and disbursed in accordance with sections 488.010 to 488.020, and  
16 shall be payable to the state treasurer.

17 4. **If in the immediate previous fiscal year, the state's general**

**EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.**

18 revenue did not increase by two percent or more, the state treasurer  
19 shall deposit such moneys or other gifts, grants, or moneys received on  
20 a monthly basis into the state general revenue fund. Otherwise the  
21 state treasurer shall deposit such moneys in accordance with the  
22 provisions of subsection 5 of this section.

23 [4.] 5. The state treasurer shall deposit such moneys or other gifts,  
24 grants, or moneys received on a monthly basis into the "DNA Profiling Analysis  
25 Fund", which is hereby created in the state treasury. The fund shall be  
26 administered by the department of public safety. The moneys deposited into the  
27 DNA profiling analysis fund shall be used only for DNA profiling analysis of  
28 convicted offender samples performed to fulfill the purposes of the DNA profiling  
29 system pursuant to section 650.052, RSMo. **Notwithstanding the provisions**  
30 **of section 33.080, RSMo, to the contrary, any moneys remaining in the**  
31 **fund at the end of the biennium shall not revert to the credit of the**  
32 **general revenue fund.**

33 [5.] 6. The provisions of subsections 1 and 2 of this section shall expire  
34 on August 28, [2006] **2013**.

650.050. 1. The Missouri department of public safety shall develop and  
2 establish a "DNA Profiling System", referred to in sections 650.050 to 650.100 as  
3 the system to assist federal, state, and local criminal justice and law enforcement  
4 agencies in the identification, investigation, and prosecution of individuals as well  
5 as the identification of missing or unidentified persons.

6 2. This DNA profiling system shall consist of qualified Missouri forensic  
7 laboratories approved by the Federal Bureau of Investigation.

8 3. The Missouri state highway patrol crime laboratory shall be the  
9 administrator of the state's DNA index system.

10 [2.] 4. The DNA profiling system as established in this section shall be  
11 compatible with that used by the Federal Bureau of Investigation to ensure that  
12 DNA records are fully exchangeable between DNA laboratories and that quality  
13 assurance standards issued by the director of the Federal Bureau of Investigation  
14 are applied and performed.

650.055. 1. Every individual, **in a Missouri circuit court**, who pleads  
2 guilty to or [nolo contendere to or is convicted in a Missouri circuit court,] **is**  
3 **found guilty** of a felony or any offense under chapter 566, RSMo, or has been  
4 determined beyond a reasonable doubt to be a sexually violent predator pursuant  
5 to sections 632.480 to 632.513, RSMo, shall have a blood or scientifically accepted  
6 biological sample collected for purposes of DNA profiling analysis:

7 (1) Upon entering or before release from the department of corrections

8 reception and diagnostic centers; or

9 (2) Upon entering or before release from a county jail or detention facility,  
10 state correctional facility, or any other detention facility or institution, whether  
11 operated by private, local, or state agency, or any mental health facility if  
12 committed as a sexually violent predator pursuant to sections 632.480 to 632.513,  
13 RSMo; or

14 (3) When the state accepts a person from another state under any  
15 interstate compact, or under any other reciprocal agreement with any county,  
16 state, or federal agency, or any other provision of law, whether or not the person  
17 is confined or released, the acceptance is conditional on the person providing a  
18 DNA sample if the person was convicted of, pleaded guilty to, or pleaded nolo  
19 contendere to an offense in any other jurisdiction which would be considered a  
20 qualifying offense as defined in this section if committed in this state, or if the  
21 person was convicted of, pleaded guilty to, or pleaded nolo contendere to any  
22 equivalent offense in any other jurisdiction; or

23 (4) If such individual is under the jurisdiction of the department of  
24 corrections. Such jurisdiction includes persons currently incarcerated, persons  
25 on probation, as defined in section 217.650, RSMo, and on parole, as also defined  
26 in section 217.650, RSMo.

27 2. The Missouri state highway patrol and department of corrections shall  
28 be responsible for ensuring adherence to the law. Any person required to provide  
29 a DNA sample pursuant to this section shall be required to provide such sample,  
30 without the right of refusal, at a collection site designated by the Missouri state  
31 highway patrol and the department of corrections. Authorized personnel  
32 collecting or assisting in the collection of samples shall not be liable in any civil  
33 or criminal action when the act is performed in a reasonable manner. Such force  
34 may be used as necessary to the effectual carrying out and application of such  
35 processes and operations. The enforcement of these provisions by the authorities  
36 in charge of state correctional institutions and others having custody or  
37 jurisdiction over those who have been convicted of, pleaded guilty to, or pleaded  
38 nolo contendere to felony offenses which shall not be set aside or reversed is  
39 hereby made mandatory. The board of probation or parole shall recommend that  
40 an individual who refuses to provide a DNA sample have his or her probation or  
41 parole revoked. In the event that a person's DNA sample is not adequate for any  
42 reason, the person shall provide another sample for analysis.

43 3. The procedure and rules for the collection, analysis, storage,  
44 expungement, use of DNA database records and privacy concerns shall not  
45 conflict with procedures and rules applicable to the Missouri DNA profiling

46 system and the Federal Bureau of Investigation's DNA data bank system.

47 4. Unauthorized uses or dissemination of individually identifiable DNA  
48 information in a database for purposes other than criminal justice or law  
49 enforcement is a class A misdemeanor.

50 5. Implementation of sections 650.050 to 650.100 shall be subject to future  
51 appropriations to keep Missouri's DNA system compatible with the Federal  
52 Bureau of Investigation's DNA data bank system.

53 6. All DNA records and biological materials retained in the DNA profiling  
54 system are considered closed records pursuant to chapter 610, RSMo. All records  
55 containing any information held or maintained by any person or by any agency,  
56 department, or political subdivision of the state concerning an individual's DNA  
57 profile shall be strictly confidential and shall not be disclosed, except to:

58 (1) Peace officers, as defined in section 590.010, RSMo, and other  
59 employees of law enforcement agencies who need to obtain such records to  
60 perform their public duties;

61 (2) The attorney general or any assistant attorneys general acting on his  
62 or her behalf, as defined in chapter 27, RSMo;

63 (3) Prosecuting attorneys or circuit attorneys as defined in chapter 56,  
64 RSMo, and their employees who need to obtain such records to perform their  
65 public duties; or

66 (4) Associate circuit judges, circuit judges, judges of the courts of appeals,  
67 supreme court judges, and their employees who need to obtain such records to  
68 perform their public duties.

69 7. Any person who obtains records pursuant to the provisions of this  
70 section shall use such records only for investigative and prosecutorial purposes,  
71 including but not limited to use at any criminal trial, hearing, or proceeding; or  
72 for law enforcement identification purposes, including identification of human  
73 remains. Such records shall be considered strictly confidential and shall only be  
74 released as authorized by this section.

75 8. An individual may request expungement of his or her DNA sample and  
76 DNA profile through the court issuing the reversal or dismissal. A certified copy  
77 of the court order establishing that such conviction has been reversed or guilty  
78 plea or plea of nolo contendere has been set aside shall be sent to the Missouri  
79 state highway patrol crime laboratory. Upon receipt of the court order, the  
80 laboratory will determine that the requesting individual has no other qualifying  
81 offense as a result of any separate plea or conviction prior to expungement.

82 (1) A person whose DNA record or DNA profile has been included in the  
83 state DNA database in accordance with this section, section 488.5050, RSMo, and

84 sections 650.050, 650.052, and 650.100 may request expungement on the grounds  
85 that the conviction has been reversed, or the guilty plea or plea of nolo contendere  
86 on which the authority for including that person's DNA record or DNA profile was  
87 based has been set aside.

88 (2) Upon receipt of a written request for expungement, a certified copy of  
89 the final court order reversing the conviction or setting aside the plea and any  
90 other information necessary to ascertain the validity of the request, the Missouri  
91 state highway patrol crime laboratory shall expunge all DNA records and  
92 identifiable information in the database pertaining to the person and destroy the  
93 DNA sample of the person, unless the Missouri state highway patrol determines  
94 that the person is otherwise obligated to submit a DNA sample. Within thirty  
95 days after the receipt of the court order, the Missouri state highway patrol shall  
96 notify the individual that it has expunged his or her DNA sample and DNA  
97 profile, or the basis for its determination that the person is otherwise obligated  
98 to submit a DNA sample.

99 (3) The Missouri state highway patrol is not required to destroy any item  
100 of physical evidence obtained from a DNA sample if evidence relating to another  
101 person would thereby be destroyed.

102 (4) Any identification, warrant, arrest, or evidentiary use of a DNA match  
103 derived from the database shall not be excluded or suppressed from evidence, nor  
104 shall any conviction be invalidated or reversed or plea set aside due to the failure  
105 to expunge or a delay in expunging DNA records.

106 [9. Notwithstanding the sovereign immunity of the state, an individual  
107 who is determined to be "actually innocent" of a crime may be paid restitution in  
108 accordance with this subsection. The individual may receive an amount of fifty  
109 dollars per day for each day of postconviction incarceration for the crime for  
110 which the individual is determined to be actually innocent. The petition for the  
111 payment of said restitution shall be filed with the sentencing court within one  
112 year of the release from confinement after August 28, 2003. For the purposes of  
113 this subsection the term "actually innocent" shall mean:

114 (1) The individual was convicted of a felony for which a final order of  
115 release was entered by the court;

116 (2) All appeals of the order of release have been exhausted;

117 (3) The individual was not serving any term of a sentence for any other  
118 crime concurrently with the sentence for which they are determined to be actually  
119 innocent; and

120 (4) Testing ordered pursuant to section 547.035, RSMo, demonstrates a  
121 person's innocence of the crime for which the person is in custody.

122 An individual who receives restitution pursuant to this subsection shall be  
123 prohibited from seeking any civil redress from the state, its departments and  
124 agencies, or any employee thereof, or any political subdivision or its  
125 employees. This subsection shall not be construed as a waiver of sovereign  
126 immunity for any purposes other than the restitution provided for herein. All  
127 restitution paid pursuant to this subsection shall be paid from moneys in the  
128 DNA profiling analysis fund. The department shall determine the aggregate  
129 amount of restitution owed during a fiscal year. If moneys remain in the fund on  
130 June thirtieth of each fiscal year, the remaining moneys shall be used to pay  
131 restitution to those individuals who have received an order awarding restitution  
132 under this subsection during the past fiscal year. If insufficient moneys remain  
133 in the fund on June thirtieth of each fiscal year to pay restitution to such  
134 persons, the department shall pay each individual who has received an order  
135 awarding restitution a pro rata share of the amount such person is owed. The  
136 remaining amounts owed to such individual shall be paid from the fund on June  
137 thirtieth of each subsequent fiscal year, provided moneys remain in the fund on  
138 June thirtieth, until such time as the restitution to the individual has been paid  
139 in full. However, no individual awarded restitution under this subsection shall  
140 receive more than thirty-six thousand five hundred dollars during each fiscal  
141 year. No interest on unpaid restitution shall be awarded to the individual. If  
142 there are no moneys remaining in the DNA profiling analysis fund, then no  
143 payments shall be made under this subsection. No individual who has been  
144 determined by the court to be actually innocent shall be responsible for the costs  
145 of care under section 217.831, RSMo.

146 10. If the results of the DNA testing confirm the person's guilt, then the  
147 person filing for DNA testing under section 547.035, RSMo, shall:

148 (1) Be liable for any reasonable costs incurred when conducting the DNA  
149 test, including but not limited to the cost of the test. Such costs shall be  
150 determined by the court and shall be included in the findings of fact and  
151 conclusions of law made by the court; and

152 (2) Be sanctioned under the provisions of section 217.262, RSMo.]

650.056. Any evidence leading to a conviction of a felony described in  
2 subsection 1 of section 650.055 which has been or can be tested for DNA shall be  
3 preserved by the [Missouri state highway patrol] **investigating law**  
4 **enforcement agency**.

650.057. 1. Except as provided in subsection 3 of this section, no local law  
2 enforcement agency may establish or operate a system [before January 15, 1992,  
3 and] unless:

4 (1) The equipment of the local system is compatible with that of the state  
5 system; and

6 (2) The local system is equipped to receive and answer inquiries from the  
7 Missouri DNA profiling system or FBI databank and transmit data to the  
8 Missouri DNA profiling system and FBI databank; and

9 (3) The procedure and rules for the collection, analysis, storage,  
10 expungement and use of DNA profiling data do not conflict with procedures and  
11 rules applicable to the Missouri system and the FBI DNA databank.

12 2. The Missouri department of public safety shall adopt rules to  
13 implement this section.

14 3. Nothing in subdivisions (1) and (2) of this section shall prohibit a local  
15 law enforcement agency from performing DNA profiling analysis in individual  
16 cases to assist law enforcement officials and prosecutors in the preparation and  
17 use of DNA evidence for presentation in court. Implementation of sections  
18 650.050 to 650.057 shall be subject to future appropriations except for section  
19 650.050.

**650.058. 1. Notwithstanding the sovereign immunity of the state,  
2 any individual who was found guilty of a felony in a Missouri court and  
3 was later determined to be "actually innocent" of such crime solely as  
4 a result of DNA profiling analysis may be paid restitution. The  
5 individual may receive an amount of fifty dollars per day for each day  
6 of post-conviction incarceration for the crime for which the individual  
7 is determined to be actually innocent. The petition for the payment of  
8 said restitution shall be filed with the sentencing court. For the  
9 purposes of this section, the term "actually innocent" shall mean:**

10 (1) The individual was convicted of a felony for which a final  
11 order of release was entered by the court;

12 (2) All appeals of the order of release have been exhausted;

13 (3) The individual was not serving any term of a sentence for any  
14 other crime concurrently with the sentence for which he or she is  
15 determined to be actually innocent, unless such individual was serving  
16 another concurrent sentence because his or her parole was revoked by  
17 a court or the board of probation and parole in connection with the  
18 crime for which the person has been exonerated; and

19 (4) Testing ordered under section 547.035, RSMo, or testing by  
20 the order of any state or federal court, if such person was exonerated  
21 on or before August 28, 2004, or testing ordered under section 650.055,  
22 if such person was or is exonerated after August 28, 2004, demonstrates

23 a person's innocence of the crime for which the person is in custody.  
24 Any individual who receives restitution under this section shall be  
25 prohibited from seeking any civil redress from the state, its  
26 departments and agencies, or any employee thereof, or any political  
27 subdivision or its employees. This section shall not be construed as a  
28 waiver of sovereign immunity for any purposes other than the  
29 restitution provided for herein. The department of corrections shall  
30 determine the aggregate amount of restitution owed during a fiscal  
31 year. If insufficient moneys are appropriated each fiscal year to pay  
32 restitution to such persons, the department shall pay each individual  
33 who has received an order awarding restitution a pro rata share of the  
34 amount appropriated. Provided sufficient moneys are appropriated to  
35 the department, the amounts owed to such individual shall be paid on  
36 June thirtieth of each subsequent fiscal year, until such time as the  
37 restitution to the individual has been paid in full. However, no  
38 individual awarded restitution under this subsection shall receive more  
39 than thirty-six thousand five hundred dollars during each fiscal year.  
40 No interest on unpaid restitution shall be awarded to the individual. No  
41 individual who has been determined by the court to be actually  
42 innocent shall be responsible for the costs of care under section  
43 217.831, RSMo.

44 2. If the results of the DNA testing confirm the person's guilt,  
45 then the person filing for DNA testing under section 547.035, RSMo,  
46 shall:

47 (1) Be liable for any reasonable costs incurred when conducting  
48 the DNA test, including but not limited to the cost of the test. Such  
49 costs shall be determined by the court and shall be included in the  
50 findings of fact and conclusions of law made by the court; and

51 (2) Be sanctioned under the provisions of section 217.262, RSMo.

52 3. A petition for payment of restitution under this section may  
53 only be filed by the individual determined to be actually innocent or  
54 the individual's legal guardian. No claim or petition for restitution  
55 under this section may be filed by the individual's heirs or assigns. An  
56 individual's right to receive restitution under this section is not  
57 assignable or otherwise transferrable. The state's obligation to pay  
58 restitution under this section shall cease upon the individual's  
59 death. Any beneficiary designation that purports to bequeath, assign,  
60 or otherwise convey the right to receive such restitution shall be void

61 **and unenforceable.**

62 **4. An individual who is determined to be “actually innocent” of**  
63 **a crime under this chapter shall automatically be granted an order of**  
64 **expungement from the court in which he or she pled guilty or was**  
65 **sentenced to expunge from all official records all recordations of his or**  
66 **her arrest, plea, trial or conviction. Upon granting of the order of**  
67 **expungement, the records and files maintained in any administrative**  
68 **or court proceeding in an associate or circuit division of the court shall**  
69 **be confidential and only available to the parties or by order of the**  
70 **court for good cause shown. The effect of such order shall be to restore**  
71 **such person to the status he or she occupied prior to such arrest, plea**  
72 **or conviction and as if such event had never taken place. No person as**  
73 **to whom such order has been entered shall be held thereafter under**  
74 **any provision of any law to be guilty of perjury or otherwise giving a**  
75 **false statement by reason of his or her failure to recite or acknowledge**  
76 **such arrest, plea, trial, conviction or expungement in response to any**  
77 **inquiry made of him or her for any purpose whatsoever and no such**  
78 **inquiry shall be made for information relating to an expungement**  
79 **under this section.**

650.100. The following words shall have the following meanings unless a  
2 different meaning clearly appears from the context:

3 (1) **"Central repository", is the location where all DNA samples**  
4 **collected from individuals defined in section 650.055, will be**  
5 **maintained and analyzed; where all authorized DNA profiles uploaded**  
6 **to the state's database will be maintained; and from where all**  
7 **authorized DNA profiles will be uploaded to the national DNA database;**

8 (2) **"CODIS", the Federal Bureau of Investigation's Combined DNA Index**  
9 **System that allows the storage and exchange of DNA records submitted by**  
10 **federal, state, and local DNA crime laboratories. The term "CODIS" includes the**  
11 **National DNA Index System administered and operated by the Federal Bureau**  
12 **of Investigation;**

13 [(2)] (3) **"Crime laboratories", those crime laboratories existing on**  
14 **September 28, 1979, in certain cities in this state and which have at least once**  
15 **prior to September 28, 1979, received funding through the Missouri council on**  
16 **criminal justice, and such other crime laboratories that may be created to serve**  
17 **specified regions of the state as determined by the director of the department of**  
18 **public safety;**

19 [(3)] (4) **"Department", the Missouri department of public safety;**

20            [(4)] **(5)** "DNA", deoxyribonucleic acid. DNA is located in the cells and  
21 provides an individual's personal genetic blueprint. DNA encodes genetic  
22 information that is the basis of human heredity and forensic identification;

23            [(5)] **(6)** "DNA profile" refers to the collective results of all DNA  
24 identification analyses on an individual's DNA sample;

25            [(6)] **(7)** "DNA record", the DNA identification information stored in the  
26 state DNA database or CODIS. The DNA record is the result obtained from the  
27 DNA analysis. The DNA record is comprised of the characteristics of a DNA  
28 sample, which are of value in establishing the identity of individuals, **the DNA**  
29 **profile as well as data required to manage and operate the state's DNA**  
30 **database, to include the specimen identification number;**

31            [(7)] **(8)** "DNA sample", a biological sample provided by any person with  
32 respect to offenses covered by section 650.055 or submitted to the Missouri state  
33 highway patrol crime laboratory pursuant to sections 650.050 to 650.100 for  
34 analysis or storage or both;

35            **(9) "Forensic DNA analysis", the identification and evaluation of**  
36 **biological evidence in criminal matters using DNA technologies;**

37            [(8)] **(10)** "Local funds", any funds not provided by the federal  
38 government.

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